

AMENDED IN SENATE APRIL 9, 2014
AMENDED IN SENATE SEPTEMBER 12, 2013
AMENDED IN SENATE SEPTEMBER 3, 2013
AMENDED IN SENATE JULY 10, 2013
AMENDED IN SENATE JUNE 25, 2013
AMENDED IN ASSEMBLY APRIL 16, 2013
AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 852

Introduced by Assembly Member Dickinson
(Principal coauthor: Senator Steinberg)

February 21, 2013

~~An act to amend Section 21155.4 of the Public Resources Code, relating to environmental quality. An act to amend Section 17206 of, and to add Sections 6126.6, 6126.8, 6126.9, and 6134 to, the Business and Professions Code, relating to the State Bar, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 852, as amended, Dickinson. ~~Environmental quality: exemption. State Bar of California: enforcement actions.~~

(1) Existing law prohibits a person from practicing law in California, or from advertising or holding himself or herself out as practicing law, unless the person is an active member of the State Bar, or otherwise

authorized, as specified, to practice law in this state. A violation of these provisions is a crime.

This bill would, for violations of the above-described provisions, require the State Bar to disclose, in confidence, the information in its investigation to the agency responsible for the criminal enforcement of these provisions or exchange that information with that agency. This bill would authorize the State Bar to request the Attorney General, a district attorney, or a city attorney acting as a local prosecutor, to bring an enforcement action or, if those entities have not elected to bring that action 60 days after that request, to bring a civil action in its own name, as specified. The bill would require the court, in a civil enforcement action by the State Bar for the unlawful practice of law, to impose a civil penalty not to exceed \$2,500, to be paid to the State Bar. The bill would require the court to impose a civil penalty not to exceed \$6,000 for the intentional violation of any injunction prohibiting the unlawful practice of law. The bill would require the court to consider, when applicable, additional relief provided under existing law and to award reasonable attorney's fees and costs, as specified. The bill would require any penalty collected pursuant to these provisions to be paid into the treasury of the State Bar and used for specified purposes.

(2) Existing law requires the State Bar to issue an Annual Discipline Report by April 30 of each year describing the performance and condition of the State Bar discipline system during the preceding calendar year, as specified.

This bill would additionally require the State Bar to annually report, by April 30 of each year, the number of complaints of the unauthorized practice of law received, requests for enforcement actions made to the Attorney General, a district attorney, or a city attorney acting as a local prosecutor pursuant to the provisions described in (1) above, and other unlawful practice of law proceedings filed by the State Bar, as specified, during the preceding calendar year. The bill would also require the report to include an accounting of any penalties collected pursuant to the provisions described in (1) above, and any expenditure of those funds, during the preceding calendar year. The bill would require the report to be made to the Assembly and Senate Committees on Judiciary and would authorize the information required by the report to be included in the Annual Discipline Report described above. The bill would also require the board of trustees to establish and administer an oversight committee of the board, the majority of whom would be

nonattorneys, to oversee the State Bar's investigation and enforcement duties, as specified.

(3) Existing law makes a person who engages in unfair competition, as defined, liable for a civil penalty not to exceed \$2,500 for each violation and requires that this penalty be assessed and recovered in a civil action brought in the name of the people of the State of California by specified persons in any court of competent jurisdiction. Existing law requires a court, for an unfair competition action brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, to determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action, and provides for the reimbursement of these expenses, as specified.

This bill would similarly require the court, for an action brought at the request of the State Bar of California, to determine the reasonable expenses incurred by the State Bar in the investigation and prosecution of the action and provide for the reimbursement of these expenses.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

~~The California Environmental Quality Act, commonly known as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.~~

~~This bill would revise the exemption from CEQA established by certain provisions of law for residential, employment center, and mixed-use development projects to require both the project and the appropriate specific plan to be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board has accepted as a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emissions~~

reduction targets. Because a lead agency would be required to determine whether a project qualifies for this exemption, this bill would impose a state-mandated local program.

This bill would provide that the bill becomes operative only if SB 743 of the 2013–14 Regular Session is enacted.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~yes~~^{no}. State-mandated local program: ~~yes~~^{no}.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6126.6 is added to the Business and
2 Professions Code, to read:

3 6126.6. Unless otherwise expressly provided, the remedies or
4 penalties provided by this article are cumulative to each other and
5 to the remedies or penalties available under all other laws of this
6 state.

7 SEC. 2. Section 6126.8 is added to the Business and Professions
8 Code, to read:

9 6126.8. (a) For a violation of Section 6125 or 6126, the State
10 Bar shall disclose, in confidence, the information in its
11 investigation to the agency responsible for the criminal
12 enforcement of this article or exchange that information with that
13 agency.

14 (1) The State Bar may request the Attorney General, a district
15 attorney, or a city attorney acting as a local prosecutor, to bring
16 an enforcement action under Chapter 5 (commencing with Section
17 17200) of Part 2 of Division 7.

18 (2) If the Attorney General, a district attorney, or a city attorney
19 has not elected to bring an enforcement action 60 days after a
20 request from the State Bar or, with the approval of the Attorney
21 General, a district attorney, or a city attorney acting as a local
22 prosecutor, the State Bar may bring a civil action in its own name,
23 as provided in Section 6030, for any violation of Section 6125 or
24 6126.

1 (3) Paragraphs (1) and (2) shall not apply to an action by the
2 State Bar brought under Section 6126.7.

3 (b) In a civil enforcement action brought by the State Bar, in
4 addition to the remedies and relief available in Section 6030 and
5 subdivision (e) of Section 6126.3, in those cases involving injury
6 or likelihood of imminent harm to a client or the public, the court
7 shall:

8 (1) Impose a civil penalty in an amount not to exceed two
9 thousand five hundred dollars (\$2,500) for each violation of Section
10 6125 or 6126, to be paid to the State Bar. In determining the
11 amount of the civil penalty to be assessed, the court shall consider
12 any relevant circumstances presented by any of the parties to the
13 case, including, but not limited to, the nature and seriousness of
14 the misconduct, the number of violations, the persistence of the
15 misconduct, the length of time over which the misconduct occurred,
16 the willfulness of the defendant's misconduct, and the defendant's
17 assets, liabilities, and net worth.

18 (2) Impose a civil penalty for the intentional violation of any
19 injunction prohibiting the unlawful practice of law, in an amount
20 not to exceed six thousand dollars (\$6,000) for each violation, to
21 be paid to the State Bar. If the conduct constituting the violation
22 is of a continuing nature, each day of that conduct shall be deemed
23 a separate and distinct violation. In determining the amount of the
24 civil penalty to be assessed, the court shall consider any relevant
25 circumstances, including, but not limited to, the extent of the harm
26 caused by the conduct constituting a violation, the nature and
27 persistence of the conduct, the length of time over which the
28 conduct occurred, the defendant's assets, liabilities, and net worth,
29 and any corrective action taken by the defendant.

30 (3) Consider, when applicable, the relief available in paragraphs
31 (1) to (6), inclusive, of subdivision (a) of Section 6126.5.

32 (4) Award to the State Bar reasonable attorney's fees and costs
33 and, in the court's discretion, exemplary damages as provided in
34 Section 3294 of the Civil Code.

35 (c) In an action under subdivision (b), any penalty collected
36 shall be paid into the treasury of the State Bar and the funds
37 received shall be used as the board may direct for the purposes of
38 providing relief to clients harmed by persons engaged in the
39 unauthorized practice of law and for the purposes established
40 pursuant to Section 6033. The board shall annually report any

1 *collection and expenditure of funds authorized by this section to*
2 *the Assembly and Senate Committees on Judiciary in the report*
3 *described in Section 6126.9.*

4 *SEC. 3. Section 6126.9 is added to the Business and Professions*
5 *Code, to read:*

6 *6126.9. Notwithstanding Section 10231.5 of the Government*
7 *Code, the State Bar shall, by April 30 of each year, report annually*
8 *to the Assembly and Senate Committees on Judiciary concerning*
9 *the number of complaints of the unauthorized practice of law*
10 *received, referrals made pursuant to subdivision (a) of Section*
11 *6126.8, and proceedings filed by the State Bar pursuant to Sections*
12 *6030, 6126.3, 6126.4, and 6126.8, during the preceding calendar*
13 *year. The report shall also include an accounting of any collection*
14 *and expenditure of funds authorized by Section 6126.8 during the*
15 *preceding calendar year. The report required by this section may*
16 *be included in the report described in Section 6086.15.*

17 *SEC. 4. Section 6134 is added to the Business and Professions*
18 *Code, to read:*

19 *6134. The Board of Trustees shall establish and administer an*
20 *oversight committee of the board, the majority of which shall be*
21 *composed of public members under Section 6013.5, to oversee the*
22 *State Bar's investigation and enforcement of this article.*

23 *SEC. 5. Section 17206 of the Business and Professions Code*
24 *is amended to read:*

25 *17206. Civil Penalty for Violation of Chapter*

26 *(a) Any person who engages, has engaged, or proposes to engage*
27 *in unfair competition shall be liable for a civil penalty not to exceed*
28 *two thousand five hundred dollars (\$2,500) for each violation,*
29 *which shall be assessed and recovered in a civil action brought in*
30 *the name of the people of the State of California by the Attorney*
31 *General, by any district attorney, by any county counsel authorized*
32 *by agreement with the district attorney in actions involving*
33 *violation of a county ordinance, by any city attorney of a city*
34 *having a population in excess of 750,000, by any city attorney of*
35 *any city and county, or, with the consent of the district attorney,*
36 *by a city prosecutor in any city having a full-time city prosecutor,*
37 *in any court of competent jurisdiction.*

38 *(b) The court shall impose a civil penalty for each violation of*
39 *this chapter. In assessing the amount of the civil penalty, the court*
40 *shall consider any one or more of the relevant circumstances*

1 presented by any of the parties to the case, including, but not
2 limited to, the following: the nature and seriousness of the
3 misconduct, the number of violations, the persistence of the
4 misconduct, the length of time over which the misconduct occurred,
5 the willfulness of the defendant's misconduct, and the defendant's
6 assets, liabilities, and net worth.

7 (c) If the action is brought by the Attorney General, one-half of
8 the penalty collected shall be paid to the treasurer of the county in
9 which the judgment was entered, and one-half to the General Fund.
10 If the action is brought by a district attorney or county counsel,
11 the penalty collected shall be paid to the treasurer of the county in
12 which the judgment was entered. Except as provided in subdivision
13 (e), if the action is brought by a city attorney or city prosecutor,
14 one-half of the penalty collected shall be paid to the treasurer of
15 the city in which the judgment was entered, and one-half to the
16 treasurer of the county in which the judgment was entered. The
17 aforementioned funds shall be for the exclusive use by the Attorney
18 General, the district attorney, the county counsel, and the city
19 attorney for the enforcement of consumer protection laws.

20 (d) The Unfair Competition Law Fund is hereby created as a
21 special account within the General Fund in the State Treasury. The
22 portion of penalties that is payable to the General Fund or to the
23 Treasurer recovered by the Attorney General from an action or
24 settlement of a claim made by the Attorney General pursuant to
25 this chapter or Chapter 1 (commencing with Section 17500) of
26 Part 3 shall be deposited into this fund. Moneys in this fund, upon
27 appropriation by the Legislature, shall be used by the Attorney
28 General to support investigations and prosecutions of California's
29 consumer protection laws, including implementation of judgments
30 obtained from ~~such~~ *those* prosecutions or investigations and other
31 activities ~~which~~ *that* are in furtherance of this chapter or Chapter
32 1 (commencing with Section 17500) of Part 3. Notwithstanding
33 Section 13340 of the Government Code, any civil penalties
34 deposited in the fund pursuant to the National Mortgage Settlement,
35 as provided in Section 12531 of the Government Code, are
36 continuously appropriated to the Department of Justice for the
37 purpose of offsetting General Fund costs incurred by the
38 Department of Justice.

39 (e) If the action is brought at the request of a board within the
40 Department of Consumer ~~Affairs~~ *or Affairs*, a local consumer

1 affairs agency, *or the State Bar of California*, the court shall
2 determine the reasonable expenses incurred by the ~~board or local~~
3 ~~agency board, local agency, or the State Bar~~ in the investigation
4 and prosecution of the action.

5 Before any penalty collected is paid out pursuant to subdivision
6 (c), the amount of any reasonable expenses incurred by the board
7 shall be paid to the Treasurer for deposit in the special fund of the
8 board described in Section 205. If the board has no such special
9 fund, the moneys shall be paid to the Treasurer. The amount of
10 any reasonable expenses incurred by a local consumer affairs
11 agency shall be paid to the general fund of the municipality or
12 county that funds the local agency. *The amount of any reasonable*
13 *expenses incurred by the State Bar shall be paid to the State Bar*
14 *to fund its investigation and enforcement of Sections 6125 and*
15 *6126.*

16 (f) If the action is brought by a city attorney of a city and county,
17 the entire amount of the penalty collected shall be paid to the
18 treasurer of the city and county in which the judgment was entered
19 for the exclusive use by the city attorney for the enforcement of
20 consumer protection laws. However, if the action is brought by a
21 city attorney of a city and county for the purposes of civil
22 enforcement pursuant to Section 17980 of the Health and Safety
23 Code or Article 3 (commencing with Section 11570) of Chapter
24 10 of Division 10 of the Health and Safety Code, either the penalty
25 collected shall be paid entirely to the treasurer of the city and
26 county in which the judgment was entered or, upon the request of
27 the city attorney, the court may order that up to one-half of the
28 penalty, under court supervision and approval, be paid for the
29 purpose of restoring, maintaining, or enhancing the premises that
30 were the subject of the action, and that the balance of the penalty
31 be paid to the treasurer of the city and county.

32 *SEC. 6. This act is an urgency statute necessary for the*
33 *immediate preservation of the public peace, health, or safety within*
34 *the meaning of Article IV of the Constitution and shall go into*
35 *immediate effect. The facts constituting the necessity are:*

36 *The unauthorized practice of law and the victimization of*
37 *consumers by nonlawyers continues to be a problem in California,*
38 *as evidenced by the scams of persons who offered to assist*
39 *homeowners with home loan modifications during the recent*
40 *economic downturn and housing crisis, and by “notaries” who*

1 *continue to prey on immigrants. Proposed immigration reform*
2 *legislation pending in the United States Congress has resulted in*
3 *nonlawyers soliciting and taking advantage of immigrants with*
4 *the promise of benefits and relief under that legislation before it*
5 *is enacted. To prevent these nonattorneys from committing fraud*
6 *upon immigrants and other consumers by engaging in the*
7 *unauthorized practice of law, it is necessary that this act take effect*
8 *immediately.*

9 ~~SECTION 1. Section 21155.4 of the Public Resources Code,~~
10 ~~as added by Section 6 of Senate Bill 743 of the 2013-14 Regular~~
11 ~~Session, is amended to read:~~

12 ~~21155.4. (a) Except as provided in subdivision (b), a~~
13 ~~residential, employment center, as defined in paragraph (1) of~~
14 ~~subdivision (a) of Section 21099, or mixed-use development~~
15 ~~project, including any subdivision, or any zoning, change that~~
16 ~~meets all of the following criteria is exempt from the requirements~~
17 ~~of this division:~~

18 ~~(1) The project is proposed within a transit priority area, as~~
19 ~~defined in subdivision (a) of Section 21099.~~

20 ~~(2) The project is undertaken to implement and is consistent~~
21 ~~with a specific plan for which an environmental impact report has~~
22 ~~been certified.~~

23 ~~(3) The project and specific plan are consistent with the general~~
24 ~~use designation, density, building intensity, and applicable policies~~
25 ~~specified for the project area in either a sustainable communities~~
26 ~~strategy or an alternative planning strategy for which the State Air~~
27 ~~Resources Board, pursuant to subparagraph (H) of paragraph (2)~~
28 ~~of subdivision (b) of Section 65080 of the Government Code, has~~
29 ~~accepted a metropolitan planning organization's determination~~
30 ~~that the sustainable communities strategy or the alternative planning~~
31 ~~strategy would, if implemented, achieve the greenhouse gas~~
32 ~~emissions reduction targets.~~

33 ~~(b) Further environmental review shall be conducted only if any~~
34 ~~of the events specified in Section 21166 have occurred.~~

35 ~~SEC. 2. This measure shall not become operative unless Senate~~
36 ~~Bill 743 of the 2013-14 Regular Session is enacted.~~

37 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
38 ~~Section 6 of Article XIII B of the California Constitution because~~
39 ~~a local agency or school district has the authority to levy service~~
40 ~~charges, fees, or assessments sufficient to pay for the program or~~

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O